



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13111791

Date: JUN. 8, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The Director did not make a determination regarding the Petitioner's eligibility as either a member of the professions holding an advanced degree or as an individual of exceptional ability. The record reflects that the Petitioner possesses the foreign equivalent of an advanced degree. Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) and (3)(i)(A).⁴

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under the first prong of the *Dhanasar* analytical framework.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner initially provided a statement indicating that he “intend[s] to continue using [his] expertise and knowledge in the fields of Finance and Business Operations by working as a Financial Manager” and his “career plan in the United States is to work as a Financial Manager, consulting U.S. companies on how to grow successfully, meet their goals, and remain profitable.” In response to the Director’s request for evidence, the Petitioner offered an updated statement indicating that he “intend[s] to continue using 28 years of professional, progressive experience, expertise, and knowledge in International Finance, Tax Operations, Business Management, International Trade, and Development to work as a Chief Finance Officer [CFO] for U.S. institutions in any industry in need of [his] services.” In addition, he claimed that his “financial management experience in Africa and Europe, combined with [his] significant experience managing finances for large, multi-national oil and gas companies, makes [him] an asset to U.S. companies engaged in or planning to engage in international business, and particularly in the highly profitable oil and gas industry.”⁵

The Petitioner maintains on appeal that “he will allow his clients to trust his work, as well as the U.S. institution he works for” and “[t]his, in turn, will result in attracting the highest qualified investors, and

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As he meets the classification as a member of the professions holding an advanced degree, a determination regarding the Petitioner’s classification as an individual of exceptional ability is moot.

⁵ The Petitioner also asserted that “a simple search for ‘Financial Managers’ on LinkedIn, returns over 82,300 openings throughout the United States,” and “[t]he wide spectrum of job vacancies in the field, clearly demonstrates the need for skilled professionals, such as [him]self, in the United States.” As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the first prong of the *Dhanasar* framework.

achieving the highest level of success for not only his served institutions, but the U.S. economy at large.” The Director determined that the Petitioner demonstrated the substantial merit of his proposed endeavor, and the record supports that conclusion.⁶ For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently shown the national importance of his proposed endeavor.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of his providing specific financial management or CFO services rather than the national importance of the positions or the wide range of fields or industries in which he intends to work. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In his appeal brief, the Petitioner emphasizes his “extensive expertise,” “28 years of professional experience,” “wide range of distinctive industry roles,” “extensive experience,” “professional record,” “steep background in international finance,” “outstanding achievements,” and “record of accomplishments.” The Petitioner’s experience and abilities in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner asserts that “his proposed endeavor will affect the whole business and financial ecosystem, as his served organizations, and potential clients, will directly improve the U.S. economy by participating in financial, investment, commercial, and trade activities throughout the United States, including the oil and gas sector,” he has not offered sufficient, specific information and evidence to demonstrate that the prospective impact of his specific proposed endeavor rises to the level of national importance. Instead, the record contains evidence regarding general information relating to financial services, international and trade investment, financial planning, foreign and domestic oil and gas investment, and energy industries. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner’s proposed endeavor of serving as a financial manager or CFO stands to sufficiently extend beyond his potential or futuristic employers, to impact the oil industry or any other industries or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not established that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects

⁶ The record includes documentation regarding the CFO and financial manager job markets in the United States, including their descriptions, roles, and responsibilities.

for our nation. While he references general U.S. dependent trade job numbers and U.S. energy investment statistics, the Petitioner does not demonstrate how his specified proposed endeavor would somehow influence those figures. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's financial manager or CFO position would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed endeavor does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.